

ADR Video
“ADR – A Matter of Choice”
TEXT

I. WHAT IS ADR?

NARRATOR: You have come to court to resolve a dispute. You, or the other party, believe you need a judge or a jury to decide who is right and who is wrong, who wins and who loses. But, going to trial is not the only solution. There are other ways to resolve your dispute.

In the Los Angeles Superior Court, we call these choices alternative dispute resolution, or ADR.

There are many benefits to using ADR instead of going to trial. ADR methods are usually:

- **Faster**
- **Less expensive**
- **Less formal**

and give the parties

- **More direct involvement;** and
- **More control over the result.**

Also, most processes are

- **Less stressful** than formal court proceedings; and
- **Confidential** – This means that nothing that happens or is said during the ADR process can be used in any court hearing. Keeping the process confidential encourages the parties to speak openly and freely.

For these reasons, parties tell us they are more satisfied with the results than if they'd gone to Court.

In all ADR processes, the parties meet with a trained, neutral person who either helps the parties work toward an agreement or decides the case. Depending on the process, the neutral may be a lawyer, retired judge, or other professional.

If you already hired a lawyer, talk to your lawyer about the ADR options and procedures so you are both familiar with them.

Even, if you have scheduled a court hearing, you may tell the Judge you are interested in using an ADR process at any court hearing. After talking about your ADR options, the Judge will refer your case to the process that will be the most useful, and give you a deadline to complete it.

If you cannot resolve your conflict using ADR, the court will give you a new hearing date with the judge.

Keep in mind, this information is general and may not apply to your case.

II. PREPARING FOR THE ADR PROCESS

ADR isn't hard, but it's important to be prepared and organized.

- Be familiar with court rules, procedures, and forms.
- Read all court papers thoroughly.
- Keep your papers in folders so that you can find them easily.
- Research the legal strengths of your case.
- Be prepared to explain and support your position.
- Have all documents and witnesses available at your ADR session.
- Know what you are willing to accept.

Remember, the more prepared you are, the better your chances are of getting the neutral, and the other party, to understand your point of view.

🗣️ TALKING HEAD (Bendix): The L.A. County law library and public libraries also provide materials that summarize and describe the legal processes. The court also has

a list of legal self-help web sites that you can obtain and then go to those websites for further information.

NARRATOR: Depending on the ADR process, you may have to prepare a brief. A *brief* is simply a written summary of your case – the basics of your complaint. Usually, the parties submit the brief to the neutral, and give a copy to the other party, several days before the ADR session. Even if it is not required, preparing a summary can help you organize your presentation and you can refer back to it if you get nervous.

🗣️ TALKING HEAD (Bendix): *“People like to tell their whole life story in a brief. I think the better thing to do is basically describe the facts of the case, what you think the strengths and weaknesses are of each party’s position, and to talk about your damages, or lack of damages.*

As its name implies, it is best to keep your brief as short as possible, but include:

- 1) Statement of facts (description of who, what, where, and when)
- 2) Your argument or claim, including any laws to support your claim
- 3) Liability (who is responsible)
- 4) Damages (what is asked for; usually money)
- 5) Conclusion (summary)

III. ADR IN ACTION

NARRATOR **ON CAMERA**: Now let’s see ADR in action.

NARRATOR **OFF CAMERA**: Here’s the situation: Ms. Smith is a homeowner who hired Mr. Espinoza, a contractor, to paint her house. She claims Mr. Espinoza’s workers caused damage to a wall in her house and did a poor job of painting. She paid him half of his fee in advance. He wants to be paid the rest of his fee. Ms. Smith is representing herself and Mr. Espinoza is represented by his lawyer, Mr. Kim.

NARRATOR **OFF CAMERA**: We'll attempt to resolve their dispute using the four most common ADR techniques: mediation, settlement conference, neutral evaluation, and arbitration.

A. Mediation

NARRATOR **OFF CAMERA**: In mediation, a neutral "mediator" will help Ms. Smith and Mr. Espinoza find a solution that satisfies both of them. The process is confidential.

🗣️ TALKING HEAD (Peter): Mediation is a very flexible process. You, the parties, control the Proceeding and that's really important. You can determine what's discussed, what's not discussed, what kind of remedy might be appropriate, far beyond what the court can do.

🗣️ TALKING HEAD (Bendix): Med is much more of a dialogue and I think it can provide a much more satisfactory forum for many people.

MEDIATOR: (As she collects the confidentiality paperwork) Thank you for coming in today to try to settle your dispute in a cooperative way. Because this is an informal process, would you like using first names or would you prefer to be addressed by last names.

Ms. SMITH: First names are fine.

Mr. ESPINOZA: (nods) That's fine.

MEDIATOR: As your mediator, my role is to help you talk about the conflict -- and explore ways to resolve the dispute. I am not here to force any settlement. Whether or not you decide to resolve the dispute is entirely up to you. John, of course your role is to advise your client. Juanita and Frank, your roles are to talk about the conflict. Mediation works best when people can talk openly and honestly and agree that one person will speak at a time. Is that going to work for both of you? (Affirmative murmurs and head nodding from all)

This is your opportunity to talk about what has happened, what hasn't happened, and what you want to do about it. Do you have any questions so far? (All murmur no or shake head) Juanita, would you like to begin? Is it OK with both of you, (to Espinoza and Kim) if Juanita goes first?

Mr. ESPINOZA: Sure.

Ms. SMITH: Well, I hired Frank to paint my house. But his workers did a terrible job, and destroyed my living room wall. I have some pictures here that show you the damage. I want him to give me back my money and pay to repair the wall...

Mr. ESPINOZA: (interrupts, shaking head, rolling eyes) She's crazy! That's just not true (angry).

Ms. SMITH: ...especially since he *obviously* didn't know what he was doing!

MEDIATOR: I can see you both are very frustrated about what's happened. Interruptions, gestures, and insults interrupt the cooperative process. Do you want to continue?

(Mr. ESPINOZA and Ms. SMITH take a breath and nod willingness to proceed.)

MEDIATOR: Is there anything else you'd like to share, Juanita?

Ms. SMITH: No, that's it.

MEDIATOR: Juanita, let me summarize what I've heard you say so far. It sounds like you hired Frank to paint your house and you feel that his workers did a poor job.

Ms. SMITH: Yes. That's what happened.

MEDIATOR: OK, Frank, it is your turn to tell us your story.

Mr. ESPINOZA: Look, that wall was coming down sooner or later because of the dry rot, with or without my guys.

MEDIATOR: So you are telling me that the wall was going to eventually come down any way.

Mr. ESPINOZA: Yes.

NARRATOR **OFF CAMERA**: After both sides have presented their case, the mediator begins a question and answer period designed for both parties and the mediator to consider as many issues as possible.

Mr. ESPINOZA: I don't understand why you don't "get it." It was not my fault!

Ms. SMITH: You're the one who doesn't "get it." If you were supervising your workers, you could have prevented the damage. But, you were not even there.

NARRATOR **OFF CAMERA**: This is followed by a discussion period. The mediator may ask to speak privately with each party to discuss something the mediator is not sure the party is ready to talk about with the other side present. Sometimes, the mediator may have separate conversations with parties when it looks like they need time and space to calm down. This is called a "caucus." Also, either party can ask to speak privately with the mediator at any time. The mediator will not discuss what one party talked about in the caucus with the other side without first getting the party's permission. This allows them to say things they might not otherwise be comfortable saying.

🗣️ TALKING HEAD (Peter): *One of the largest complaints that's heard sometimes is that parties to a lawsuit – litigants – sometimes feel, often feel, that they really didn't get a chance to say what they wanted to say. But it's important that you understand that in mediation, everybody has the opportunity to say whatever they feel is important to them about the dispute or which somehow even remotely relates to the dispute.*

NARRATOR **OFF CAMERA**: The mediator also works with the parties to move from the "blame game" to a point where each party is ready to identify his or her own contribution to the conflict.

MEDIATOR: After hearing Frank and seeing the pictures that he brought, do you think it's possible that dry rot was already there?

Ms. SMITH: Well, I never noticed a problem before, but...I guess it's possible.

MEDIATOR: Frank, is it possible that you could've done anything differently to minimize the damage to the wall?

Mr. ESPINOZA: A lot of times you can't know something's damaged until you start working on it. (TURNS TO MS. SMITH) Look, Juanita, I'm sorry I didn't tell you sooner but I hope we can work something out.

NARRATOR: Sometimes a sincere apology can lead to discussion of settlement ideas.

MEDIATOR: Are you ready to talk about ways to resolve this problem?

Mr. ESPINOZA: We both agree the wall has to be replaced, right? If you agree to pay the balance of the contract, I will replace the wall and charge only the cost of the materials, if you drop the lawsuit.

Ms. SMITH: That sounds fair.

Mr. ESPINOZA: One more thing, would you be willing to show your neighbors the work I did? A lot of my work comes from referrals.

Ms. SMITH: OK. If you promise to give them a fair price.

Mr. ESPINOZA: I always do.

MEDIATOR: Wow, it sounds like you're about to reach an agreement that works for both of you. Congratulations, you've done a great job.

NARRATOR **OFF CAMERA**: Now the parties will write and sign a settlement agreement. Each party will receive a copy of the agreement.

B. Settlement Conference

NARRATOR **ON CAMERA**: In a Settlement Conference, the parties present their positions to a neutral “settlement officer” who is either a judge or experienced attorney.

NARRATOR **OFF CAMERA**: ...The settlement officer then suggests ways to settle the dispute, which may include a recommended settlement amount. He or she may give an informed opinion about how the case might be decided at trial. The process is confidential.

SETTLEMENT OFFICER: Okay, I've read your briefs, heard both sides, considered the evidence, and it looks to me like Mr. Espinoza has enough evidence to show that the damage was caused by dry rot and not by his workers. But he should have stopped work and notified Ms. Smith of the damage. In general - I think there are weaknesses in both cases. I doubt that any of you are going to get what you're asking for, especially if this goes to trial. And you know, you're going to be spending a lot of money.

Mr. ESPINOZA: OK, I understand.

Ms. SMITH: Yeah I get it.

SETTLEMENT OFFICER: So I suggest Ms. Smith, that you retract your damage claim due to the dry rot, and Mr. Espinoza, I think since you should have stopped work, you not charge Ms. Smith for the work that you did. I seriously doubt that you're going to get what you're asking for. I think this is a fair offer and that you should take it.

Ms. SMITH: Fine.

SETTLEMENT OFFICER: Okay.

C. Neutral Evaluation

NARRATOR **ON CAMERA**: In neutral evaluation, a legal expert called an “evaluator” will listen to each side present the evidence they would show at trial. The evaluator

then delivers a non-binding “evaluation” of the case – basically how he or she predicts a judge or jury will decide at trial. The process is confidential.

EVALUATOR: Ms. Smith, if this case goes to trial, what will you present to the judge, and what damages are you seeking?

Ms. SMITH: I hired Mr. Espinoza to paint my house...DISSOLVE TO...asked my neighbors for references and he had great references...DISSOLVE TO...so you can imagine how disappointed I was when they started to paint the living room wall and the entire wall caved in...DISSOLVE TO...All they had to do was come and tell me that the wall might have dry rot and I would have told them to stop...DISSOLVE TO...He just needs to help me out with this and share some of the responsibility.

EVALUATOR: OK, thank you. Mr. Kim, what will your client present to the judge or jury?

LAWYER: When Mr. Espinoza’s workmen started working on Ms. Smith’s wall...DISSOLVE TO...they signed a contract and she agreed to all the terms and now she’s kind of backtracking...DISSOLVE TO...we just don’t see how Mr. Espinoza was in any way responsible for the wall...DISSOLVE TO...now she’s trying to blame that on him and he just did the job that he was paid to do. And they signed a contract and they had an agreement and so, it’s only right that he should get paid.

NARRATOR **OFF CAMERA**: The evaluator then asks each party questions and gives each side an opportunity to respond to all the allegations.

EVALUATOR: Okay, thank you. I’m going to leave the room now to collect my thoughts and when I return, I will ask you if you would like to discuss settlement or hear my prediction of how a judge or jury will decide this case at trial.

NARRATOR **ON CAMERA**: The evaluator leaves the room and returns 10 minutes later. Ms. Smith is interested in settling, but Mr. Espinoza and his lawyer want to hear

the evaluation first. Under Court rules, an evaluator must deliver an evaluation if any party requests it.

EVALUATOR: Based upon what I've heard, I predict that a judge or a jury will decide that the dry rot was the cause of the damage, not Mr. Espinoza's workers. But they'll find that Mr. Espinoza's workers should have detected it and warned Ms. Smith before they started painting.

EVALUATOR: So Ms. Smith - the likelihood of your getting damages to replace the wall would be very low. And I think Mr. Espinoza's claim for money for painting the rest of the house isn't solid either.

NARRATOR **ON CAMERA**: Now the parties can ask the evaluator to help them make a list of the information they each need to exchange to be better prepared for settlement or trial.

D. Arbitration

NARRATOR **OFF CAMERA**: Although less formal, arbitration is similar to a trial. The arbitrator hears testimony and argument, reviews evidence, and makes a decision. If the parties agree to binding arbitration, the decision is final. If the parties agree to non-binding arbitration, the decision is final unless a party requests a de novo, or new, trial with the judge.

ARBITRATOR: Alright, let's get everyone sworn in. Do you, Ms. Smith, solemnly affirm that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, and that you do this under penalty of perjury under the laws of the State of California?

Ms. SMITH: I do.

ARBITRATOR: Mr. Espinoza?

Mr. ESPINOZA: I do.

ARBITRATOR: Okay, I'll now listen to your opening statements.

Ms. SMITH: I hired Mr. Espinoza to paint my house...DISSOLVE TO...Mr. Espinoza owes me money to fix my wall.

Mr. ESPINOZA: I'm not responsible for her wall falling down.

Ms. SMITH: It'll cost \$5,000. I paid Mr. Espinoza \$12,500.

LAWYER: I don't know how my client is responsible for that.

Ms. SMITH: That – plus interest over 2 years...DISSOLVE TO...

NARRATOR **OFF CAMERA**: Presentations should be simple, factual, and directly related to the issues. Parties should try to keep their personal feelings out of the discussion.

🗣️ TALKING HEAD (Peter): Do not consider this an opportunity to attack or berate or be abusive in any manner to the opposing party.

🗣️ TALKING HEAD (Bendix): An arbitration is not Judge Judy, it's not the People's Court. Instead it is a decision-maker who is judge-like and has to make a decision based on the merits of what's presented to him or her. It's distracting when someone is yelling or when someone is insulting the other side.

NARRATOR **OFF CAMERA**: After both sides have presented their evidence each will be allowed to make a closing argument.

Ms. SMITH: I'm asking for a total of \$22,500.

LAWYER: We're asking for \$11,750.

ARBITRATOR: Okay, I've read your briefs, listened to your arguments, and reviewed the evidence. I'll submit my decision to the Court. You'll both get a form called an

Award of Arbitrator within 10 days. It states who is at fault and what damages, if any, are to be paid. Alright?

NARRATOR **ON CAMERA**: Remember – and this is IMPORTANT! - if either party is unhappy with the Arbitrator's decision, they have a limited amount of time to file a Request for a Trial de Novo, to prevent the Award of Arbitrator from being entered by the court as a final judgment. At that time, they can request a formal trial with the judge.

IV. IN CONCLUSION - HELPFUL TIPS TO REMEMBER

NARRATOR: So in summary, regardless of the ADR process you eventually use, please remember these helpful tips:

- Research the legal strengths of your case
- Keep it simple, factual, and as close to the issues as possible
- Be courteous and respectful of all the parties
- Know what you are willing to accept
- Familiarize yourself with court rules, procedures, forms, and terminology.

We hope that this video was helpful in showing you about and how to prepare for the different ADR processes offered by the court.

To learn more about the Court ADR Department or about the ADR processes in greater detail, please visit the Los Angeles Superior Court web site at www.lasuperiorcourt.org and click on the ADR link, call the ADR Department, or visit the ADR office in the courthouse nearest you to obtain written materials.